



November 10, 2000

Ms. Kristi LaRoe  
Assistant District Attorney  
Tarrant County  
Justice Center  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR2000-4385

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141184.

The Tarrant County Department of Human Services (the "department") received a written request for all records pertaining to a named individual who had previously applied for benefits. Pursuant to section 552.301 of the Government Code, you contend that some of the requested information is excepted from disclosure under section 552.111 of the Government Code. Additionally, you have also sought a decision from this office pursuant to section 552.305 of the Government Code, which authorizes parties with a privacy or proprietary interest in the requested information to submit arguments to this office as to why the information is excepted from required public disclosure.

We first address your section 552.111 claims. Section 552.111 of the Government Code excepts from required public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.-Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. We initially note that you have not marked the portions of the documents at issue that you believe to be excepted from required public disclosure under section 552.111, as required by section 552.301(e)(2). Furthermore, after reviewing the records at issue, this office could discern no information that constitutes advice, opinion, or recommendation for purposes of

section 552.111. We therefore conclude that none of the information may be withheld pursuant to section 552.111 of the Government Code.

We now address whether the department must withhold any of the information at issue pursuant to section 552.305 of the Government Code. In accordance with section 552.305(d), the department notified the applicant of the current records request and invited the applicant to submit comments to this office as to why the requested records should not be released in this instance. However, this office has received no response to the department's notification.

We further note that the applicant has executed two authorizations for the release of the records at issue to the CNA Insurance Company and its representatives. Specifically, one of the authorizations permit the release of "any and all health care information you may have with respect to any illness or injury, medical history, consultation, prescriptions or treatment, including x-ray, MRI's or other diagnostic testing and copies of all hospital or medical records." Confidential medical records may only be released in accordance with the Texas Medical Practice Act (the "MPA"). See Open Records Decision No. 598 (1991). The MPA, Title 3, Subtitle B of the Occupations Code, section 159.002(b) provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

However, section 159.004 of the MPA provides certain exceptions to confidentiality. As applicable to the instant request, that section provides as follows:

An exception to the privilege of confidentiality in a situation other than a court or administrative proceeding, allowing disclosure of confidential information by a physician, exists only with respect to the following:

...

(5) A person who has the written consent of the patient . . . for the release of confidential information, as provided by Section 159.005[.]

(Emphasis added). Section 159.005 provides the consent requirements by which medical records are to be released. In pertinent part, section 159.005 provides as follows:

(a) Consent for the release of confidential information must be in writing and signed by:

(1) the patient[.]

....

(b) The written consent must specify:

(1) the information or medical records to be covered by the release;

(2) the reasons or purposes for the release; and

(3) the person to whom the information is to be released.

After reviewing the “Authorization to Obtain Medical Information” form executed by the applicant, we conclude that this authorization comports with the requirements of section 159.005 of the MPA. Accordingly, assuming that the department determines that the authorization is still valid and that the current requestor is acting as a representative of CNA Insurance Company, we conclude that *in this instance* the department must release the requested medical records to the requestor.

The other authorization executed by the applicant permits the release of “any records or information pertaining to . . . utility company records . . . current and former landlord/tenant applications or records . . . governmental agencies [sic] records . . . [and] welfare/public assistance or any type of social service or assistance agency [records].” Some of the information contained in these records may implicate the privacy interests of the applicant. However, in light of the authorization executed by the applicant and the fact that this office has received no notification from the applicant revoking such authorization, and assuming that the department determines that this second authorization is still valid and that the current requestor is acting as a representative of CNA Insurance Company, we conclude that *in this instance* the department must release the records at issue in their entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/RWP/seg

Ref: ID# 141184

Encl. Submitted documents

cc: Mr. Jerry Morris  
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